IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9404 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ARVIND ALIAS ANIYO UGRABHAI PARMAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9404 of 2004

MS SUBHADRA G PATEL for Petitioner No. 1

MS HB PUNANI ASST GOVERNMENT PLEADER for Respondent No. 1-3

RULE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 22/12/2004

ORAL JUDGEMENT

#. Heard Ms.S.G.Patel, learned advocate appearing for the petitioner and Ms.H.B.Punani, learned AGP for the

other side.

#. The present petition is filed under Article 226 read with Articles 21 and 22(5) of the Constitution of India challenging the legality and validity of the order of detention dated 13.5.2004 passed by the Police Commissioner, Ahmedabad city under purported exercise of powers vested with the detaining authority under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short "the Act").

#. The petitioner is branded as "a Bootlegger" within the meaning of Section 2(b) of the Act, as he was found involved in offences registered under the Bombay Prohibition Act. While passing the order of preventive detention under challenge, the detaining authority has mainly considered the fact of registration of an offence punishable under Section 66-B, 65AE, 116(1)B, 81 and 83 of the Bombay Prohibition Act by Prohibition Police Station (East), Ahmedabad and the statements of two witnesses, which were recorded and placed by sponsoring authority on 12.5.2004 and 10.5.2004. That order under challenge is assailed on various grounds. However, learned advocate Ms.Patel has mainly placed reliance on the ground that the ratio of the decision in case of SOHANLAL SURAJARAM VISNOY v. STATE OF GUJARAT, 2004(2) GLR 1051, would squarely help the petitioner because this is a case of solitary incident. It is rightly argued by Ms.Patel that the ratio of the decision in SOHANLAL would help the case of the petitioner because the order of detention is based on registration of solitary offence registered by the Prohibition Police Station (East), Ahmedabad. Of course, there are two statements of independent witnesses who have claimed secrecy and they were before the detaining authority. But it is argued that both these statements have been recorded and they have been verified by the detaining authority on 12.5.2004. So, according to Ms.Patel, ratio of the decision of RANUBHA BHARVAD V. STATE, 2000 (3) GLR 2696 would squarely help the petitioner and it can be said that the order under challenge is passed mechanically without proper application of mind. It is true that the order of preventive detention normally should be passed promptly. In the present case, the same is passed promptly but as the same is mainly based on registration of solitary incident, it will be difficult for the court to accept that the petitioner rightly detained as the activity of the present petitioner were prejudicial to maintenance of public order. This is a case of problem concerning law and order.

#. For short, there requires no further detail discussion on other points raised in the petition and the Court finds that the order of detention is not sustainable in the eye of law.

#. It is brought to the notice of this Court that the petitioner initially was detained at Surat District Prison but at present he is at Nadiad District Prison.

#. The petition succeeds and the same is allowed. The order of detention dated 13-5-2004 is vitiated and the same is hereby quashed and set aside. The detenu ARVIND ALIAS ANIYO UGRABHAI PARMAR who has been presently detained at Nadiad District Prison be set at liberty forthwith if not required in any other case. Rule is made absolute accordingly. No order as to costs. Direct Service is permitted.

Registry to send writ appropriately to Nadiad District Prison.

Date :22/12/2004 [C.K.Buch, J.]

#kailash#